



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

KDL

August 17, 1994

CERTIFIED MAIL # 243 067 438  
RETURN RECEIPT REQUESTED  
Daniel J. McCarrel, Esq.  
Legal Department  
Texaco Inc.  
10 Universal City Plaza, Suite 1300  
Universal City, CA 91608-1097

RE: In re Texaco Refining and Marketing Inc.  
(Bakersfield Refinery), Docket No.  
RCRA 09-94-0003

Dear Mr. McCarrel:

Enclosed is the fully executed original Consent Agreement and Final Order ("CA/FO") for the above-captioned matter. A duplicate original has been filed with the Regional Hearing Clerk.

We appreciate your cooperation in bringing this matter to a prompt resolution. If any questions arise about the implementation of the CA/FO, please do not hesitate to call me at (415) 744-1383.

Sincerely,

*Barbara Ettlinger*  
Barbara Ettlinger  
Assistant Regional Counsel

Enclosure

cc: Charles McLaughlin, Cal-EPA, DTSC  
John Noonan, RWQCB-Central Valley Region

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

In the Matter of:	)	U.S. EPA Docket No.
	)	RCRA 09-94-0003
	)	
TEXACO REFINING AND	)	CONSENT AGREEMENT
MARKETING INC.	)	AND
EPA ID # CAD099457087	)	FINAL ORDER
EPA ID # CAD982052094	)	
	)	
Respondent.	)	

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CONSENT AGREEMENT

**A. PRELIMINARY STATEMENT**

1. This civil administrative enforcement action was instituted pursuant to Section 3008(a)(1) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22. The United States Environmental Protection Agency, Region IX ("U.S. EPA") instituted this action by service of a Determination of Violation, Compliance Order, and Notice of Right to Request a Hearing ("Complaint") to Texaco Refining and Marketing Inc., a Delaware Corporation ("Respondent") on March 17, 1994. The Complaint charged Respondent with violations of (i) Section 25203 of the Cal. Health & Safety Code and 22 CCR §66270.1(c)(1)(A) (disposal of hazardous waste without a permit); (ii) Section 25179.6 of the Cal. Health & Safety Code and Title 22 CCR §§66268.35 and 66268.43 (land disposal of a prohibited waste that exceeded the treatment standards) and (iii) 22 CCR §§66262.11 and 66268.7 and 40 C.F.R. §§262.11 and 268.7 (failure to make an adequate hazardous waste determination and failure to make a determination whether waste was restricted from land disposal) at the facility operated by Respondent at 6451 Rosedale Highway and 3663 Gibson Street, Bakersfield, California, EPA Identification Nos. CAD099457087 and CAD982052094 ("the Facility").

2. The Facility engages in oil production and refining and marketing of petroleum products. Wastewater generated at the Facility is discharged into several Class V underground injection wells, including Water Injection Well #1 ("WIW # 1"), located in Area 3 of the Facility (the Gibson Street location) and several injection wells (the "Red Ribbon" wells) located in Area 1 of the Facility (the Rosedale highway location).

## **B. JURISDICTION AND PROCEDURE**

3. Respondent neither admits nor denies any allegations of fact or law set forth in the Complaint. Respondent hereby agrees to waive any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in the Complaint, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. §6928(b). Respondent hereby consents to the issuance of this Consent Agreement and Final Order ("CA/FO") without adjudication.

4. Respondent admits and agrees that the EPA Administrator and Region IX Administrator have jurisdiction and authority over the subject matter of the action set forth in the Complaint and over Respondent pursuant to Section 3008 of RCRA, 42 U.S.C. §6928, and 40 C.F.R. §§22.04(a) and 22.37. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

## **C. PARTIES BOUND**

5. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns and upon all persons, independent contractors, contractors, and consultants acting under or for Respondent, until such time as the civil penalty required under Section D. has been paid, the submittals required under Section E. have been made, the TCLP testing for selenium required by paragraph 14 of this CA/FO has demonstrated no exceedance of the toxicity characteristic regulatory limit for six (6) consecutive months, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged in EPA's Complaint in this matter.

6. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

7. Respondent shall ensure that all persons, firms, entities and corporations engaged in implementation of this CA/FO act in accordance with its terms. Respondent shall provide a copy of this CA/FO to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the compliance activities to be performed pursuant to this CA/FO within one (1) week of the Effective Date of this CA/FO or date of such retention, and shall condition all such contracts on compliance with the terms of the CA/FO.

8. Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of Facility and shall notify EPA within seven (7) days prior to such transfer until the termination of this CA/FO.

9. The undersigned representative of Respondent hereby certifies that he is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

**D. PAYMENT OF CIVIL PENALTY**

10. Respondent consents to the assessment of and agrees to pay a civil penalty of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00) in full settlement of the civil penalty claims made in the Complaint.

11. Respondent shall submit payment of the THREE HUNDRED FIFTY THOUSAND DOLLAR (\$350,000.00) civil penalty within thirty (30) calendar days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date EPA signs the Final Order. Payment shall be made by Funds Transfer Deposit (EPA Form 2570-6) through the Federal Reserve Communication System (FRCS) to the account of the U.S. Treasury at the Federal Reserve Bank of New York. At the time payment is so made, a copy of EPA Form 2570-6 shall be sent to:

Regional Hearing Clerk (RC-1)  
U.S. Environmental Protection Agency - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Greg Czajkowski, Chief  
RCRA Compliance Section (H-4-3)  
Hazardous Waste Management Division  
U.S. Environmental Protection Agency - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

12. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the Effective Date of this CA/FO to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. §13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional charge of \$15.00 for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

**E. COMPLIANCE ACTIVITIES TO BE PERFORMED**

13. Respondent agrees and is ordered to perform the activities and make submittals and certifications as set forth below within the time schedules specified. All days specified below are consecutive calendar days from the effective date of this CA/FO. Due dates falling on a Saturday, Sunday, or federal holiday will be automatically extended to the next business day.

14. Within forty-five (45) days of the Effective Date of this CA/FO, Respondent shall submit a detailed Waste Analysis Plan describing the manner, frequency and constituents for which wastewater destined for the Area 1 and Area 3 tanks will be monitored. Respondent shall identify those constituents likely to be found in its wastestreams to be discharged into the Area 1 and Area 3 underground injection wells and explain its rationale for including or excluding those constituents from its Waste Analysis Plan. The Waste Analysis Plan shall specify that samples will be analyzed in accordance with SW-846 Method 1311 ("TCLP"), and submitted to EPA on a monthly basis no later than the thirtieth (30th) day of the month following the month in which the sampling took place. TCLP analysis shall be required for, inter alia, selenium. TCLP selenium analysis shall be performed under this CA/FO prior to each and every injection of wastewater into the Area 1 and Area 3 underground injection wells until such TCLP testing has demonstrated no exceedance of the toxicity characteristic regulatory limit for selenium for six (6) consecutive months. For purposes of compliance with this CA/FO only, based upon Respondent's representation that the wastewaters stored in the Area 1 and Area 3 tanks for injection into the underground injection wells located at Area 1 and Area 3 always contains less than .5% solids, Respondent shall be required, as part of the TCLP analysis, to perform the procedure for determining percent solids set forth in 40 C.F.R. Part 261, Appendix II, Section 7.1.1 and 7.1.2 only one time (1) per month, prior to discharge to the underground injection wells in Area 1 and Area 3, respectively. In consideration therefore, Respondent agrees not to rely on its failure to perform percent solids testing as a defense to the validity of any TCLP analyses before any regulatory agency, whether federal, state or local. Nothing contained in this paragraph shall be deemed to supersede any otherwise applicable federal, state or local laws or regulations.

15. At all times after the Effective Date of this CA/FO, whenever any wastewater constituent in Area 1 or Area 3 tanks exceeds state or federal regulatory levels, Respondent shall provide written notice to (i) DTSC Region 1, (ii) EPA and (iii) the California Water Quality Control Board-Central Valley Region, 3614 East Ashland Avenue, Fresno, CA 93726, Att'n: John Noonan, Senior Water Resource Control Engineer, within twenty-four (24) hours of the determination by Respondent that regulatory levels have been exceeded. Such notice shall describe the manner in

which Respondent handled or plans to handle the wastewater at issue.

16. At all times after the Effective Date of this CA/FO, in no event shall Respondent inject or otherwise dispose of wastewater into the Area 1 or Area 3 underground injection wells that exceeds applicable regulatory levels for hazardous wastes.

17. Within ninety (90) days of the Effective Date of this CA/FO, Respondent shall submit a waste management plan ("waste management plan") containing a detailed description of how wastewaters destined for the tanks in Area 1 and Area 3 will be managed, treated, stored and disposed of (whether on or off-site), if levels of hazardous waste in the wastewater exceed applicable regulatory standards.

a. If on-site treatment of any wastewater is identified as a method of management of hazardous wastewater in the tanks in Area 1 and Area 3, Respondent's waste management plan shall include a detailed description of:

1. the treatment technology to be utilized;
2. the time required to treat a specific quantity of wastewater;
3. how the successful treatment of hazardous waste D010 will be determined; and
4. the planned disposition of hazardous waste generated from the treatment process.

18. At all times after the Effective Date of this CA/FO, in no event shall Respondent exceed the ninety (90) day storage limit for on-site storage of hazardous waste by generators unless specifically authorized to do so.

19. At all times after the Effective Date of this CA/FO, in no event will any wastewaters destined for disposal in the Area 1 and Area 3 underground injection wells, including wastewaters stored in the Area 1 and Area 3 tanks, be diluted as a substitute for adequate treatment in violation of 22 CCR §66268.3.

20. Within one hundred twenty (120) days of the Effective Date of this CA/FO, Respondent shall submit a plan ("waste minimization plan") describing the steps it will take to minimize the potential that the wastewaters destined for disposal in the Area 1 and Area 3 underground injection wells will contain constituents in excess of regulatory levels.

21. Respondent shall send submittals and certification of compliance with the above compliance activities within the time

periods specified above by hand delivery, overnight express or certified mail to:

Greg Czajkowski, Chief  
RCRA Compliance Section (H-4-3)  
Hazardous Waste Management Division  
U.S. Environmental Protection Agency - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Respondent shall send copies by regular mail at the same time to:

Charles McLaughlin, Chief  
Surveillance & Enforcement Branch  
Cal-EPA, Department of Toxic Substances Control  
Region 1  
10151 Croyden Way, Suite 3  
Sacramento, California 95827

22. Respondent understands that the submittals required under this CA/FO (i.e., waste analysis plan, waste management plan and waste minimization plan) are not subject to the approval of EPA as to content except as specifically provided for herein; therefore, if EPA does not comment on any or all of these submittals, such failure to comment shall not be construed as approval of or assent to the plans, procedures or information set forth in these submittals.

**F. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

23. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of any compliance activity under this CA/FO within the specified time schedules in and approved under this CA/FO.

a. For failure to submit payment to EPA by the time required in this CA/FO: FIVE THOUSAND DOLLARS (\$5,000) per day for the first to fifteenth day of delay, TEN THOUSAND DOLLARS (\$10,000) per day for the sixteenth to thirtieth day of delay, and FIFTEEN THOUSAND DOLLARS (\$15,000) per day for each day of delay thereafter;

b. For failure to submit at the time required a waste analysis plan, a waste management plan or a waste minimization plan in the form and containing the information required by this CA/FO: FIVE THOUSAND DOLLARS (\$5,000) per day for the first to fifteenth day of delay, TEN THOUSAND DOLLARS (\$10,000) per day for the sixteenth to thirtieth day of delay, and FIFTEEN THOUSAND DOLLARS (\$15,000) per day for each day of delay thereafter; and

c. For failure to provide written notice to the regulatory authorities within twenty-four 24 hours of discovery of an exceedance of regulatory standards: FIVE THOUSAND DOLLARS (\$5,000) per day for the first to fifteenth day of delay, TEN THOUSAND DOLLARS (\$10,000) per day for the sixteenth to thirtieth day of delay, and FIFTEEN THOUSAND DOLLARS (\$15,000) per day for each day of delay thereafter.

d. For violating the prohibition against dilution set forth in 22 CCR §66268.3: FIVE THOUSAND DOLLARS (\$5,000) for the first occurrence, FIFTEEN THOUSAND DOLLARS (\$15,000) per day for the second through the fifth occurrence, and TWENTY-FIVE THOUSAND DOLLARS (\$25,000) per day for each subsequent occurrence.

24. All penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.

25. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.

26. All stipulated penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted to:

U.S. Department of the Treasury  
Attn: EPA Region IX Hearing Clerk  
P.O. Box 360863M  
Pittsburgh, PA 15251

27. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action. At the time payment is made, Respondent shall send a copy of the payment transmittal to:

Greg Czajkowski, Chief  
RCRA Compliance Section (H-4-3)  
Hazardous Waste Management Division  
U.S. Environmental Protection Agency - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105



28. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.

29. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

#### **G. RESERVATION OF RIGHTS**

30. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. §6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law enforcement authority of the United States.

31. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.

32. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO.

33. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

#### **H. OTHER CLAIMS**

34. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous

constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

I. INDEMNIFICATION OF UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

35. Respondent agrees to indemnify and save and hold harmless the United States Environmental Protection Agency, its departments, divisions, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its owners, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this CA/FO. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under their various contracts.

J. MISCELLANEOUS

36. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

37. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

38. The Effective Date of this CA/FO is the date the Final Order is signed by EPA.

IT IS SO AGREED.

Texaco Refining & Marketing Inc.

By:

8/5/94  
Date

C.T. Walz  
Title: Charles T. Walz, Vice President Refining  
An Authorized Officer

United States Environmental  
Protection Agency, Region IX

By:

8.16.94  
Date

James Updun for JZ  
Jeffrey Zelikson  
Director  
Hazardous Waste Management Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (U.S. EPA Docket No. RCRA-09-94-003 be entered and that Respondent pay a civil penalty of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00) by Funds Transfer Deposit through the Federal Reserve Communication System to the account of the U.S. Treasury at the Federal Reserve Bank of New York, within thirty (30) days after the Effective Date of this Consent Agreement and Final Order. A copy of the Funds Transfer Deposit Form shall be sent to the EPA Region IX address specified in Part D of this Consent Agreement and Final Order within such 30-day period. Respondent shall also perform all tasks required by the Consent Agreement.

This Final Order shall be effective immediately.

8/17/94

Date

Steven W. Anderson (acting)

Steven W. Anderson  
Regional Judicial Officer  
United States Environmental  
Protection Agency, Region IX

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

In the matter of:	)	U.S. EPA Docket No.
	)	RCRA 09-94-0003
	)	
TEXACO REFINING AND	)	DETERMINATION OF VIOLATION
MARKETING INC.	)	COMPLIANCE ORDER
EPA ID# CAD099457087	)	AND
EPA ID# CAD982052094	)	NOTICE OF RIGHT TO
Respondent.	)	REQUEST A HEARING
	)	

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DETERMINATION OF VIOLATION

A. INTRODUCTION

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Texaco Refining and Marketing Inc., a Delaware corporation ("Respondent").

2. Respondent owns and operates a facility that engages in oil production and refining and marketing of petroleum products. Respondent's facility (EPA Identification No. CAD099457087) is located at 6451 Rosedale Highway, Bakersfield, California. A non-contiguous portion of the facility (EPA Identification No. CAD982052094) is located at 3663 Gibson Street, Bakersfield, California (collectively, the "Facility").

3. This Determination of Violation, Compliance Order and Notice of Right to Request a Hearing ("Complaint") serves as notice that EPA, on the basis of information available to it, has determined that Respondent has violated Chapter 6.5 of Division 20 of the California Hazardous Waste Control Law, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations ("CCR"), 22 CCR §§ 66262, 66268 and 66270 and Subtitle C of RCRA, as amended, Section 3001 et seq., 42 U.S.C. §§6921 et seq., and the regulations promulgated thereunder.

B. JURISDICTION

4. On August 1, 1992, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. §6926 and 40 C.F.R. Part 271. The authorized program is established pursuant to the California Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations ("CCR"), 22 CCR §§66001 et. seq. The State of California has been authorized for all the regulations relied on in this Complaint.

5. Respondent is a "person" as defined in Section 25118 of the Cal. Health & Safety Code, Title 22 CCR §§66260.10, Section 1004(15) of RCRA, 42 U.S.C. §6903(15) and 40 C.F.R. §§260.10 and 270.2.

6. The Facility is a "facility" as defined in Title 22 CCR §66260.10 and 40 C.F.R. §§260.10 and 270.2, a "hazardous waste facility" as defined in Section 25117.1 of the Cal. Health & Safety Code and Title 22 CCR §66260.10, and an "existing hazardous waste management facility" as defined in Title 22 CCR §66260.10, 40 C.F.R. §§260.10 and 270.2.

7. Respondent is a "generator" of hazardous waste as defined in Title 22 CCR §66260.10, 40 C.F.R. §§260.10 and 270.2.

8. Respondent is the "owner and operator" of a facility as defined in Title 22 CCR §66260.10 (40 C.F.R. §§260.10 and 270.2).<sup>1</sup>

9. Respondent treats, stores and/or disposes, or has treated, stored and/or disposed of selenium, a "hazardous waste" as defined in Section 25117 of the Cal. Health & Safety Code, Title 22 CCR §§66260.10 and 66261.3 (Section 1004(5) of RCRA, 42 U.S.C. §6903(5) and 40 C.F.R. §§260.10 and 261.3). The EPA Hazardous Waste Number for this waste is D010.

10. Federal regulations establishing interim status standards, 40 C.F.R. Part 265, and permit application requirements, 40 C.F.R. Part 270, for owners and operators of hazardous waste treatment, storage and disposal facilities became effective on November 19, 1980.

11. The Facility was in operation on or before November 19, 1980.

12. On or about August 7, 1980, pursuant to Section 3010 of RCRA, 42 U.S.C. §6930, Respondent's predecessor-in-interest, Getty Refining & Marketing Co., submitted a Notification of Hazardous Waste Activity to EPA whereby Respondent's predecessor notified EPA

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<sup>1</sup> Parallel federal citations in parenthesis are provided for informational purposes only.

that it was a generator and a hazardous waste treatment, storage and/or disposal facility.

13. On or about February 12, 1986, Respondent submitted to EPA a revised Part A Permit Application (EPA Form 5010-3) pursuant to Section 3005 of RCRA, 42 U.S.C. §6925, and 40 C.F.R. Part 270 for treatment of K054, D002 and D001 hazardous wastes and storage of D001, D002, D003, D004, D005, D006, D007, D008, D009, D010, K048, K049, K050, K051 and K052 hazardous wastes. The Part A Permit Application sought a permit to store Hazardous Waste D010 (selenium) in containers at the Facility. The Part A Permit Application did not seek a permit to dispose of any hazardous waste (including selenium) into any injection wells at the Facility.

14. The Facility obtained interim status pending final administrative disposition of its permit application pursuant to Section 3005(e) of RCRA, 42 U.S.C. §6925(e), and therefore is subject to the interim status standards set forth in 40 C.F.R. Part 265 through July 31, 1992 and to the interim status standards set forth in Title 22 CCR Chapter 15 from and after August 1, 1992.

15. On or about October 9, 1987, Respondent submitted to EPA a Notification of Hazardous Waste Activity for the portion of the Facility (EPA Identification No. CAD982052094) located at 3663 Gibson Street, Bakersfield, California.

16. To date, neither EPA nor the State of California have issued Respondent a permit or other authorization to operate a treatment, storage or disposal facility, and Respondent continues to operate as an interim status facility.

17. Wastewater generated by Respondent's refinery operations at the Facility is discharged into several Class V underground injection wells pursuant to Waste Discharge Requirements (Order No. 91-102) issued to Respondent by the California Regional Water Quality Control Board, Central Valley Region. Order No. 91-102 expressly prohibits the discharge of hazardous wastes into these injection wells, including Water Injection Well #1 ("WIW #1") located in Area 3 of the facility (the Gibson Street location), and several injection wells (the "Red Ribbon" wells) located in Area 1 of the Facility (the Rosedale Highway location).

18. On or about May 14, 1993, EPA, in a request for information, requested that Texaco sample its wastewater discharge into its underground injection well WIW #1 for selenium utilizing EPA Method 1311 (Toxicity Characteristic Leaching Procedure (TCLP)) (Attachment A).

19. On or about July 2, 1993, in response to the EPA request for information, Respondent provided sampling results demonstrating that selenium in excess of 1 milligram per liter (mg/l) (measured using the TCLP) was discharged into WIW #1 on June 11 (two times),

June 12 (one time) and June 13, 1993 (two times). Results of duplicate samples provided by Respondent on or about December 15, 1993 in response to an EPA request for information dated November 26, 1993, confirmed these exceedances.

20. Pursuant to Title 22 CCR §66261.24(a), a waste exhibits the toxicity characteristic when, using the TCLP, extracts from representative samples of the waste contain certain constituents in excess of certain prescribed concentration limits. Where the waste contains less than 0.5% filterable solids, the waste itself, after filtering, is considered to be the extract for purposes of §66261.24(a)(i).

21. Waste containing an extract equal to or greater than 1.0 milligram per liter (mg/l) of selenium exhibits the characteristic of toxicity and is therefore hazardous waste as defined in Title 22 CCR §66261.3; i.e., EPA Hazardous Waste Number D010 (selenium).

22. Section 3006 of RCRA, 42 U.S.C. §6926 provides, inter alia, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA. All violations occurring on or after August 1, 1992 are cited as violations of the authorized state program; violations occurring prior to August 1, 1992 are cited as violations of the federal regulations and Subtitle C of RCRA.

23. Respondent, in violating requirements of the State of California's authorized hazardous waste program, violated Subtitle C of RCRA, and therefore is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. §6928.

24. Section 3008 of RCRA, 42 U.S.C. §6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA et seq., 42 U.S.C. §6921 et seq.

25. Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2), provides that when a violation of Subtitle C of RCRA occurs in a state which has been authorized under Section 3006 of RCRA, 42 U.S.C. §6926, the Administrator must notify an authorized state prior to issuing an order under Section 3008 of RCRA in that state. By letter dated August 5, 1993, EPA sent notice to the California Department of Toxic Substances Control ("DTSC") as required by Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2).

26. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region IX, who has redelegated this authority to the Director of the Hazardous Waste Management Division.

C. VIOLATIONS

Count I

(Disposal of Hazardous Waste Without a Permit)

27. Paragraphs 1 through 26 are incorporated herein by this reference as if they were set forth in their entirety.

28. Section 25203 of the Cal. Health & Safety Code prohibits any person from disposing of hazardous waste except at a disposal site or a facility of an owner or operator who holds a valid hazardous waste facilities permit or other grant of authorization from the State to use and operate the site or the facility.

29. Title 22 CCR §66260.10 defines disposal as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste or hazardous waste into or on any land or water so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

30. Title 22 CCR §66270.1(c)(1)(A) requires owners and operators of injection wells that dispose of hazardous waste, and associated surface facilities that transfer, treat, store or dispose of hazardous waste, to obtain a permit.

31. Order No. 91-102 issued to Respondent by the California Regional Water Quality Control Board, Central Valley Region, prohibits the discharge of hazardous wastes into injection well WIW #1 and Section 25159.15(a) of the Cal. Health & Safety Code prohibits the injection of hazardous waste into or above a formation that contains an underground source of drinking water.

32. Respondent does not have a permit or other authorization to dispose of hazardous waste (including selenium) into well WIW #1, which Respondent has operated since at least January 15, 1988.

33. On June 11 (two times), June 12 (one time) and June 13, 1993 (two times), Respondent injected wastewater into well WIW #1 that exceeded 1 mg/l of selenium (measured using the TCLP), the toxicity characteristic regulatory limit for selenium (D010). The injectate was therefore hazardous waste D010.

34. By injecting hazardous waste into well WIW #1, Respondent disposed of hazardous waste without a permit or other authorization, and thereby violated Section 25203 of the Cal. Health & Safety Code and Title 22 CCR §66270.1(c)(1)(A).



Count II

(Land Disposal of a Prohibited Waste that Exceeded the Treatment Standards)

35. Paragraphs 1 through 26 above are incorporated herein by this reference as if they were set forth in their entirety.

36. Section 25117.1 of the Cal. Health & Safety Code and Title 22 CCR §66260.10 define disposal to include the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

37. Section 25179.3(h) of the Cal. Health & Safety Code and Title 22 CCR §66260.10 define land disposal to include placement in or on the land, including placement in an injection well.

38. Section 25179.6 of the Cal. Health & Safety Code prohibits the land disposal of hazardous wastes that have not met applicable treatment standards. Title 22 CCR §66268.35 prohibits the land disposal of D010 (selenium) that has not met the applicable treatment standards.

39. Title 22 CCR §66268.40(c) prohibits land disposal of a restricted waste identified in 22 CCR §66268.43 where the constituent concentrations in the waste or treatment residue of the waste exceeds the value shown in Table CCW (Constituent Concentrations in Wastes) of 22 CCR §66268.43 for any hazardous constituents listed in Table CCW for that waste.

40. Table CCW of Title 22 CCR §66268.43 identifies restricted wastes and the concentrations of their associated hazardous constituents which may not be exceeded by the waste or treatment residual (not an extract of such waste or residual) for the allowable land disposal of such waste or residual.

41. Table CCW of Title 22 CCR §66268.43 prohibits the land disposal of D010 hazardous waste where the concentration of selenium exceeds 1 mg/l in wastewaters.

42. Title 22 CCR §66260.10 defines wastewaters, including D010 (selenium) wastewaters, to mean wastes that contain less than one percent by weight total organic carbon (TOC) and less than one percent by weight total suspended solids (TSS).

43. On June 11 (two times), June 12 (one time) and June 13, 1993 (two times), Respondent injected wastewaters into well WIW #1 that exceeded 1 mg/l of selenium (measured using the TCLP), the toxicity characteristic regulatory limit for selenium (D010). The injectate was therefore hazardous waste D010.

44. On June 11 (two times), June 12 (one time) and June 13, 1993 (two times), Respondent injected wastewaters containing hazardous waste D010 (selenium) into well WIW #1 which did not meet the treatment standard of 1 mg/l set forth in Title 22 CCR §66268.43.

45. By land disposing of D010 (selenium) hazardous waste that did not meet the treatment standard on June 11, June 12 and June 13, 1993, Respondent violated Section 25179.6 of the Cal. Health & Safety Code and Title 22 CCR §§66268.35 and 66268.43.

### COUNT III

(Failure to Make an Adequate Hazardous Waste Determination and  
Failure to Make a Determination Whether the Waste  
Was Restricted from Land Disposal)

46. Paragraphs 1 through 26 above are incorporated herein by this reference as if they were set forth here in their entirety.

47. Title 22 CCR §66262.11 and 40 C.F.R. §262.11 require a person who generates waste, including solid waste, as defined in Title 22 CCR §66261.2 and 40 C.F.R. §261.2, to determine if that waste is a hazardous waste by following certain prescribed steps to determine whether the waste is a listed hazardous waste or a characteristic hazardous waste and, if so, whether the waste is restricted from land disposal.

48. Title 22 CCR §66268.7(a) and 40 C.F.R. §268.7(a) require a generator to test its waste, test an extract of its waste, or use knowledge of its waste to determine if the waste is restricted from land disposal. If the generator determines that it is managing a restricted waste under Chapter 18 (Land Disposal Restrictions) or 40 C.F.R. Part 268 and the waste does not meet the applicable treatment standards set forth in Article 4 of Chapter 18 or 40 C.F.R. Part 268 Subpart D, certain notification requirements must be met.

49. Title 22 CCR §66261.24(a)(1) and 40 C.F.R. §261.24(a) provide that a solid waste exhibits the characteristic of toxicity, when, using the TCLP, the waste is found to contain selenium at a concentration equal to or greater than 1.0 mg/l. A waste that exhibits the characteristic of toxicity has the EPA hazardous waste number which corresponds to the toxic contaminant causing the waste to be hazardous; in this case D010 (selenium).

50. Until July 1993, when Respondent began conducting daily TCLP tests on the wastes it regularly injects into its injection wells in Area 1 (one of three of the "Red Ribbon" injection wells) and Area 3 (Well WIW #1) of its facility, according to information submitted to EPA by Respondent on or about December 15, 1993, between September 25, 1990 and June 10, 1993 Respondent conducted TCLP tests (metals) for Area 1 and Area 3 wastewaters only once, on October 16, 1990.

51. On or about July 2, 1993, EPA received analytical results from Respondent that demonstrated that the wastewater in Tanks T902 and T915 (which were discharged into injection well WIW #1) exceeded the toxicity characteristic regulatory limit of 1 mg/l for selenium (D010) on June 11, 1993 (two times), June 12, 1993 (one time) and June 13, 1993 (two times) utilizing EPA Method 1311 (TCLP). Each time it exceeded 1 mg/l of selenium, the wastewater generated by Respondent was hazardous waste D010 (selenium).

52. TCLP testing thereafter conducted by Respondent on samples from treated wastewater in Tanks T902 and T915 (which are typically discharged into Well WIW #1) demonstrated that the wastewater in those tanks exceeded the toxicity characteristic regulatory level of 1 mg/l for D010 (selenium) on at least the following additional dates: September 2, 1993 (T902), September 10, 1993 (T902) and November 9, 1993 (T915).

53. TCLP testing conducted by Respondent on samples from treated wastewater in Tanks T25006 and T25007 (which are typically discharged into one of three of the "Red Ribbon" injection wells located in Area 1 of Respondent's facility) demonstrated that the wastewater in those tanks exceeded the toxicity characteristic regulatory level of 1 mg/l for D010 (selenium) on at least the following dates: July 12, 1993 (T25007), July 13, 1993 (T25007 (twice)), July 31, 1993 (T25006) and November 29, 1993 (T25006).

54. Waste containing selenium in excess of 1 mg/l is a "waste" as defined Title 22 CCR §66261.2 and a "solid waste" as defined in 40 C.F.R. §261.2.

55. By failing to test its waste at any time (except October 16, 1990) prior to June 10, 1993 using the TCLP procedure, Respondent failed to determine if its waste, as defined in Title 22 CCR §66261.2 and 40 C.F.R. §261.2, was a hazardous waste, as defined in Title 22 CCR §66261.3 and 40 C.F.R. §261.3.

56. By failing to make a determination whether the waste disposed of into the injection wells in Area 1 and Area 3 was hazardous waste and hazardous waste restricted from land disposal, Respondent violated Title 22 CCR §§66262.11 and 66268.7 for the period between August 1, 1992 through June 10, 1993 and June 19, 1993 through July 9, 1993 and violated 40 C.F.R. §§262.11 and 268.7 for the period between September 25, 1990 through July 31, 1992.

D. CIVIL PENALTY

Section 3008(g) of RCRA, 42 U.S.C. §6928(g), authorizes a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) per day for each violation of Subtitle C of RCRA, 42 U.S.C. §6921 et seq. Based upon the facts alleged in this Complaint and upon those factors which the Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. §6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by the Respondent to comply with applicable requirements, and any economic benefit accruing to the Respondent, as well as such other matters as justice may require, the Complainant proposes that the Respondent be assessed THREE HUNDRED NINETY ONE THOUSAND ONE HUNDRED THIRTY-THREE DOLLARS (\$391,133.00) as the civil penalty for the violations alleged in this Complaint. The proposed penalties were calculated in accordance with the "October 1990 RCRA Civil Penalty Policy." Under the penalty policy, EPA uses a penalty assessment matrix, which is then adjusted to take into account multi-day violations and multiple violations, for case-specific circumstances, and for the economic benefit gained from non-compliance, where appropriate.

Count I

Disposal of Hazardous Waste

Without a Permit.....\$75,000

Using the penalty assessment matrix, EPA classified Count I, as presenting a Major Potential for harm and a Major deviation from the requirement. This violation poses a substantial adverse impact upon the statutory and regulatory purposes for implementing the RCRA program. Compliance with permitting requirements is critical to the implementation of the RCRA program. The extent of deviation from the requirements was major because disposal of hazardous waste without a permit into Respondent's underground injection well is absolutely prohibited. The proposed penalty reflects each day of disposal of hazardous waste into Well WIW #1 as a distinct act resulting in multiple violations occurring on three separate dates. The economic benefit derived from the BEN Model was determined to be \$59,062 and is applicable to both Counts I and II. The economic benefit reflects the cost Respondent avoided by disposing of the hazardous wastewater into the injection well in lieu of having the wastewater treated to render it non-hazardous. However, since the addition of the economic benefit to the gravity based penalty would exceed the statutory maximum of \$25,000 per day, only a portion of the economic benefit (\$7,500) was added to the gravity based amount to determine the total penalty for Count I.

## Count II

Land Disposal of a Prohibited  
Waste that Did Not Meet the  
Treatment Standard.....\$75,000

Using the penalty assessment matrix, EPA classified Count II as presenting a Major potential for harm and a Major deviation from the requirement. The potential for harm is major because there was significant harm to the statutory and regulatory purposes of RCRA. In addition, the potential for harm to the environment is significant when hazardous waste exceeding the treatment standard is land disposed. The extent of deviation from the requirement is major because the absolute prohibition against disposing of hazardous waste exceeding the treatment standard was ignored. The proposed penalty reflects each day of disposal of hazardous waste exceeding the treatment standard into well WIW #1 as a distinct act resulting in multiple violations occurring on three separate dates. The economic benefit derived from the BEN Model was determined to be \$59,062 and is applicable to both Counts I and II. The economic benefit reflects the cost Respondent avoided by disposing of the hazardous wastewater into the injection well in lieu of having the wastewater treated to meet the treatment standard. However, since the addition of the economic benefit to the gravity based penalty would exceed the statutory maximum of \$25,000 per day, \$7,500 of the remaining economic benefit (i.e.,  $\$59,062 - \$7,500 = \$51,562$ ) was added to the gravity based amount to determine the total penalty for Count II.

## Count III

Failure to Make an Adequate Hazardous Waste Determination  
and Failure to Make a Determination Whether the  
Waste Was Restricted from Land Disposal.....\$241,133

Using the penalty assessment matrix, EPA classified Count III as presenting a Major potential for harm and a Moderate deviation from the requirements. The applicability of the RCRA land disposal restrictions rest upon the determination that the waste is hazardous and therefore subject to the land disposal restrictions. By failing to make these two critical determinations, the statutory and regulatory purposes and procedures for implementing RCRA were substantially and adversely impacted. The extent of deviation was determined to be moderate (rather than major) because Respondent performed monthly Totals analysis of the wastewater, albeit to comply with other requirements of state law. However, notwithstanding historical Totals results indicating that the wastestream likely contained hazardous waste D010 on a regular basis and the variable nature of its wastestream, Respondent failed to perform the TCLP analysis to determine whether its wastestream was indeed hazardous. In light of this historical information, the penalty was adjusted upward for 179 additional days of violation.

Additionally, the penalty was adjusted upward by \$44,633 to reflect the economic benefit derived from the avoided cost of performing the analyses.

TOTAL PENALTY.....\$391,133

#### COMPLIANCE ORDER

##### A. PAYMENT OF CIVIL PENALTY

1. It is hereby ordered that Respondent shall submit the sum of THREE HUNDRED NINETY ONE THOUSAND ONE HUNDRED THIRTY-THREE DOLLARS (\$391,133.00) using the enclosed EPA Form 2570-6, Funds Transfer Deposit. Please take this form to your bank and request that they wire the amount stated on the form through the Federal Reserve Communication System ("FRCS") to the account of the U.S. Treasury at the Federal Reserve Bank of New York. Payment shall be remitted within thirty (30) days of the Effective Date of this Complaint.

2. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), payment must be received within thirty (30) days of the Effective Date of this Complaint to avoid additional charges. If payment is not received within thirty (30) days, interest will accrue from the Effective Date of this Complaint at the current interest rate published by the U.S. Treasury as described at 40 C.F.R. §13.11. A late penalty charge will be imposed after thirty (30) days with an additional charge for each subsequent thirty (30) day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) days of the due date.

##### B. COMPLIANCE

3. Respondent is ordered to come into compliance with the requirements of Subtitle C of RCRA, Sections 25203 and 25179.6 of the Cal. Health & Safety Code and Title 22 CCR §§ 66262, 22268 and 66270. Respondent is ordered to undertake the following activities, and to make submittals and certification to Complainant within the times specified below. All days are consecutive calendar days from the Effective Date of this Complaint. In accordance with the findings presented in this Complaint, Respondent is hereby ordered to take the following actions:

a. Within forty-five (45) days of the Effective Date, Respondent shall provide a detailed "Waste Analysis Plan" describing the manner and frequency with which the wastewater in the Area 1 and Area 3 tanks will be monitored. Samples shall be analyzed in accordance with SW-846 Method 1311 (TCLP), including analysis for percent solids, and submitted to EPA on a monthly basis no later than the seventh day of the month following the month in which the sampling took place.

b. If at any time the constituents in Area 1 and Area 3 tanks exceed state or federal regulatory levels, Respondent shall notify, in writing, DTSC Region 1, EPA and the California Water Quality Control Board-Central Valley Region within 24 hours of the determination that regulatory levels have been exceeded.

c. In no event shall Respondent inject or otherwise dispose of wastewater into any of the Area 1 and Area 3 wells that exceeds applicable regulatory levels for hazardous wastes.

d. Within ninety (90) days of the Effective Date, Respondent shall submit a waste management plan containing a detailed description of how the wastewater in the tanks in Area 1 and Area 3 will be managed, treated, stored and disposed of (whether on or off-site), if levels of hazardous wastes in the wastewater exceed applicable regulatory levels.

e. If on-site treatment of any wastewater is identified as a method of management of wastewater in the tanks in Area 1 and Area 3 in task (d), Respondent shall submit a detailed description of: (a) the treatment technology to be utilized; (b) the time required to treat a specific quantity of wastewater; (c) how the successful treatment of hazardous waste D010 will be determined; and (d) the planned disposition of hazardous waste generated from the treatment process within 90 days of the Effective Date.

f. In no event shall Respondent exceed the ninety (90) day storage limits for on-site storage of hazardous waste by generators unless specifically authorized to do so.

g. Within one hundred twenty (120) days of the Effective Date, Respondent shall submit a plan describing steps to be taken to minimize the potential that the wastewater in Area 1 and Area 3 tanks will contain constituents in excess of regulatory levels.

h. When Respondent closes Well WIW#1 in Area 3, closure of the well shall satisfy the closure performance standards contained in Title 22 CCR §66265.111.

4. Respondent shall provide documentation of compliance with the above Compliance Order with submittals and certification within the time periods specified above to:

Karen Schwinn (H-4)  
Hazardous Waste Management Division  
U.S. EPA Region IX  
75 Hawthorne St.  
San Francisco, CA 94105

Charles McLaughlin, Chief  
Surveillance & Enforcement Branch  
Cal-EPA, Department of Toxic Substances Control

Region 1  
10151 Croydon Way, Suite 3  
Sacramento, Ca 95827

C. FAILURE TO COMPLY

5. In the event Respondent fails to comply with any provision of the Compliance Order, then in accordance with Section 3008(c) of RCRA, 42 U.S.C. §6928(c), Respondent may be liable for an additional civil penalty up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) for each day of continued noncompliance. Such continued non-compliance may also result in the institution of a civil or criminal judicial action.

NOTICE OF RIGHT TO REQUEST A HEARING

A. HEARING

1. In accordance with Section 3008(b) of RCRA, 42 U.S.C. §6928(b), the Compliance Order set forth herein shall become final unless Respondent files an Answer and request for a hearing in writing no later than thirty (30) days after the Effective Date of this Complaint with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX, 75 Hawthorne St., San Francisco, California 94105. A copy of the Answer and request for hearing and copies of all other documents relating to these proceedings filed with the Regional Hearing Clerk should be sent to Barbara Ettlinger (RC 3-4), Assistant Regional Counsel at the same address.

2. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. A failure to admit, deny or explain any material fact or allegation contained in this Complaint will constitute an admission of the allegation. The Answer must also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense and (2) the facts which Respondent intends to place at issue.

3. If Respondent fails to file a written Answer within thirty (30) days of the Effective Date of this Complaint, Respondent may be found in default. Respondent's default will constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing. A default order may thereafter be issued by the Regional Administrator of EPA and the penalty proposed in the Complaint will become due and payable without further proceedings.

4. If Respondent requests a hearing, it will be held in a location determined in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, a



copy of which accompanies the Complaint. The hearing will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §552 et seq., and 40 C.F.R. Part 22.

5. Pursuant to 40 C.F.R. §22.07(c) where a pleading or document is served by mail, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document.

B. INFORMAL SETTLEMENT

6. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the alleged facts, violations and amount of the penalty. An informal conference does not, however, affect Respondent's obligation to file a written Answer within thirty (30) days of the Effective Date of the Complaint. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.

7. In addition to the compliance schedule set forth in the Order above, any settlement reached as a result of an informal conference will be embodied in a written Consent Agreement and Final Order. The issuance of the Consent Agreement and Final Order will constitute waiver of Respondent's right to a hearing on any matter to which Respondent has stipulated.

8. If a settlement cannot be reached through an informal conference, the filing of a written Answer within thirty (30) days of the Effective Date of this Complaint will preserve Respondent's right to a hearing.

9. EPA encourages all parties against whom a penalty is proposed to explore the possibility of settlement. To request an informal conference, Respondent should contact Barbara Ettlinger (RC 3-4), Assistant Regional Counsel, Office of Regional Counsel, at the above address, telephone number (415) 744-1383.

EFFECTIVE DATE

The "Effective Date" of this Complaint is the date of Service. Service is complete when the return mail receipt is signed by the Respondent or a duly authorized representative of the Respondent, in accordance with the provisions of 40 C.F.R. §§ 22.05(b) and 22.07(c).

March 11, 1994

Date

  
\_\_\_\_\_  
Jeffrey Zelikson  
Director

Hazardous Waste Management Division

CERTIFICATION OF SERVICE

I hereby certify that the original of the foregoing Determination of Violation, Compliance Order, and Notice of Right to Request a Hearing was filed with the Regional Hearing Clerk, Region IX, and that a copy was sent, along with a copy of 40 C.F.R. Part 22, Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, certified mail, return receipt requested, to:

L.N. Elsen  
Registered Agent for Service of Process  
Texaco Refining & Marketing Inc.  
10 Universal City Plaza, 12th Floor  
Universal City, CA 91608-1097

Mr. Donald R. Hall  
Plant Manager  
Bakersfield Plant  
Texaco Refining & Marketing Inc.  
P.O. Box 1476  
Bakersfield, Ca 93302

March 11, 1994  
Date

Kandice Bellamy  
Hazardous Waste Management Division